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# CHAPTER 11 HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACTS

#### 11.1 CHAPTER OVERVIEW

The HAP contract is a written agreement between the PHA and the owner of a unit occupied by a housing choice voucher program participant. The HAP contract must be in the form prescribed by HUD. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of a specific family leasing a specific unit. The PHA uses its payment standard schedule to calculate the monthly HAP payment to the owner. (See Chapter 7.)

Prior to PHA approval of the assisted tenancy and the execution of a HAP contract, the PHA must ensure that the following program requirements have been met:

- Owner is eligible (see Section 11.2, Owner Approvals);
- Unit is eligible (see Chapter 8);
- Unit has been inspected by the PHA and meets HQS (see Chapter 10);
- Lease includes the tenancy addendum (see Chapter 8); and
- Rent charged by the owner is reasonable (see Chapter 9).

Upon approval of the assisted tenancy, the owner and the PHA can execute the HAP contract. Housing assistance payments are due to the owner on the first day of each month. The owner's right to receive housing assistance payments depends on compliance with all the provisions of the HAP contract. The owner's endorsement of the HAP check signifies that the owner has agreed to and is in compliance with the terms of the HAP contract. No payments may be made to the owner after the family moves out of the unit or the lease term ends.

#### 11.2 OWNER APPROVALS

Prior to executing a HAP contract and processing housing assistance payments, the PHA must determine that the owner of the assisted unit is eligible to participate in the housing choice voucher program. The term "owner" may include a principal or other interested party.

# **Debarment and Other Causes for Disapproval**

The PHA must not approve an owner's participation in the program if:

- HUD or another party informs the PHA that the owner is debarred, suspended, or subject to a limited denial of participation.
- HUD informs the PHA that the federal government has instituted an administrative or judicial action against the owner for a violation of the Fair Housing Act or other federal equal opportunity requirements and such action is pending; or

• HUD informs the PHA that a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements.

#### **Conflicts of Interest**

A PHA must not execute a HAP contract when the owner of the unit is a relative of the family to be assisted, unless approving such a tenancy would provide reasonable accommodation for a disabled family member. Prohibited owner-family relationships include parent, child, grandparent, grandchild, sister, or brother of any member of the assisted family. This restriction applies at the time that the family receives assistance under the housing choice voucher program for occupancy of a particular unit. Current contracts on behalf of owners and families that are related may continue. Any new leases or contracts for these families, however, may not be approved, except new leases or contracts signed solely as a result of the merger to the housing choice voucher program.

PHAs must not approve HAP contracts in which any of the following parties have a current interest or will have an interest for one year thereafter:

- Present or former member or officer of the PHA, except a participant commissioner;
- Employee of the PHA or any contractor, subcontractor, or agent of the PHA who formulates policy or influences program decisions;
- Public official, member of a governing body, or state or local legislator who exercises functions or responsibilities related to the programs; or
- Member of the U.S. Congress.

HUD may waive the conflict of interest requirements for good cause. PHAs must submit waiver requests to the HUD field office. The waiver request should include the following:

- Complete statement of the facts of the case;
- Analysis of the specific conflict of interest provision of the HAP contract and justification as to why the provision should be waived;
- Analysis of and statement of consistency with state and local laws. The local HUD office, the PHA, or both parties may conduct this analysis. Where appropriate, an opinion by the state's attorney general should be obtained;
- Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
- Statement regarding alternative existing housing available for lease under the housing choice voucher program or other assisted housing if the waiver is denied;

- If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
- If the case involves a public official or member of the governing body, explanation of his/her duties under state or local law, including reference to any responsibilities involving the housing choice voucher program;
- If the case involves employment of a family member by the PHA or assistance under the housing choice voucher program for an eligible PHA employee, explanation of the responsibilities and duties of the position, including any related to the housing choice voucher program; and
- If the case involves an investment on the part of a member, officer, or employee of the PHA, description of the nature of the investment, including disclosure/divestiture plans.

The PHA must not execute the HAP contract until the HUD field office makes a decision on the waiver request.

In cases where an employee, contractor, subcontractor, or agent of the PHA is also an owner, a PHA may opt to resolve this conflict of interest by transferring such cases to a neighboring PHA. The family is essentially treated like a "port-out", and the neighboring PHA agrees to assume responsibility for administering the subsidy.

A PHA may adopt a policy of disapproving owners for any of the specific reasons listed below:

- Violation of obligations under one or more HAP contracts under the housing choice voucher program or the Section 8 project-based program;
- Acts of fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- Participation in any drug-related criminal activity or any violent criminal activity;
- Current or previous practice of non-compliance with HQS or state and local housing codes in housing choice voucher program units or with applicable housing standards for units leased under any other federal housing program;
- Current or prior history of refusing to evict housing choice voucher program or other assisted housing tenants for activity by the tenant, any member of the household, a guest, or another person under the control of any member of the household that:
  - Threatens the right to peaceful enjoyment of the premises by other residents;
  - Threatens the health or safety of residents, PHA employees, or owner employees;

- Threatens the health or safety of neighbors or the neighbors' rights to peaceful enjoyment of their residence; or
- Engages in drug-related criminal activity or violent criminal activity; and
- Failure to pay state or local real estate taxes, fines, or assessments.

PHA policies regarding owner approval must be clearly stated in the PHA administrative plan. When deciding whether to adopt discretionary policies restricting owner approval, a PHA should carefully consider the effects of such policies on a family's ability to lease units under the housing choice voucher program. While it is wise to limit participation to owners in good standing, PHAs in tight housing markets or PHAs that are struggling to attract owners to the program may not be in a position to establish a restrictive policy, if such a policy would negatively affect family success rates in finding approvable units to lease.

When developing policy, the health and safety of the participating family should be given the utmost consideration. For example, disapproving owners who have seriously and repeatedly violated HQS may be more important than disapproving owners who have committed other HAP contract violations. In some instances, it may be more beneficial to the PHA to initially approve an owner whose standing may be in question but to have in place and enforce a termination policy to deal with owners that fail to comply with program requirements and PHA administrative plan policies.

If a PHA decides to disapprove an owner, it may not terminate the HAP contract for families that are already living in the owner's properties unless the owner has violated the HAP contract for such units.

### 11.3 TERM OF HAP CONTRACT

The term of the HAP contract must run concurrently with the term of the lease, including any extensions of the lease term. Occasionally, families move into units prior to HAP contract execution, and some owners require these families to sign a lease prior to moving into the unit. In these situations the PHA must request that the owner and PHA execute a new lease once the HAP contract is signed. Ideally, PHAs will avoid the additional step of executing another lease by completing leasing and HAP contract preparation activities as quickly, efficiently, and accurately as possible so that the HAP and lease can be executed simultaneously.

The HAP contract and the housing assistance payments made under the HAP contract terminate automatically in each of the following situations:

- Owner or tenant terminates the lease:
- Lease expires;
- PHA terminates the HAP contract;

- PHA terminates assistance for the family;
- Family moves from the unit. The owner is entitled to keep the housing assistance payment for the month when the family moves out of the unit. The term of a new HAP contract for a new unit may begin in the same month in which the participant moves out of the previously assisted unit. This is not considered a duplicative subsidy.
- When 180 calendar days have elapsed since the PHA made the last housing assistance payment to the owner;
- If the family is absent from the unit for longer than the maximum period permitted by the PHA in its administrative plan. The owner must reimburse the PHA for any housing assistance payment for the period after the termination; and
- Upon expiration of the annual contributions contract.

The PHA may decide to terminate the HAP contract in each of the following situations:

- Available program funding is not sufficient to support continued assistance for families in the program;
- Unit does not meet HQS size requirements due to change in family composition;
- Family breaks up;
- Unit does not meet HQS; and
- Owner breaches the HAP contract. (See Section 11.9, *Owner Breach of Contract*, below. See also Chapter 15 for a more detailed discussion of HAP contract terminations.)

### 11.4 PAYMENT TO OWNER

The PHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract, and the owner must comply with the provisions of the HAP contract in order to receive such payments. The HAP contract specifies that payments are to be made monthly, at the beginning of each month. Housing assistance payments must be made only during the lease term and while the family is residing in the unit. When a lease term begins after the first of the month, the housing assistance payment for the first month is pro-rated for a partial month.

The PHA determines the amount of housing assistance payment to the owner in accordance with HUD regulations and other requirements. (See Chapter 6.) The amount of housing assistance payment is subject to change during the term of the HAP contract. The PHA must notify both the owner and tenant of any changes in the housing assistance payment.

The monthly housing assistance payment by the PHA is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant plus the PHA housing

assistance payment may not be more than the rent to owner. The owner must immediately return any excess payment to the PHA.

The part of the rent to owner that the tenant pays may not be more than the difference between the rent to owner and the housing assistance payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum and must immediately return any excess rent payment to the tenant. The family is not responsible for payment of the portion of rent to owner covered by the housing assistance payment. Likewise, the PHA is not responsible for any portion of the family share, including family rent to owner. Payment of the family share is the responsibility of the family.

# **Distribution of Housing Assistance Payment**

Generally, the PHA pays the entire housing assistance payment directly to the owner. In some instances, however, the housing assistance payment may exceed the amount of rent to owner. This can happen when the family must pay some or all of its utilities. In these cases, the PHA pays the amount of the housing assistance payment that exceeds the rent to owner either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. This excess amount is called a utility reimbursement. (See Chapter 6.)

# **Stopping the Housing Assistance Payment**

Housing assistance payments stop when the family can afford to pay the full rent to owner and any utilities for which the family is responsible. Specifically, the PHA does not make housing assistance payments when the following occurs:

- Thirty percent of the family's monthly adjusted income equals or exceeds the payment standard; or
- The family share equals or exceeds the gross rent.

Stopping the housing assistance payment in these situations does not affect the family's rights under the lease. If the family's income, size, composition, or other circumstances change during the term of the HAP contract, housing assistance payments may be resumed. It should be noted that the HAP contract remains in effect for only 180 calendar days after the PHA makes the last housing assistance payment.

# **Penalties for Late Payment of HAP**

The PHA must pay the housing assistance payment promptly to the owner. The HAP contract provides for penalties against the PHA for late payments *after the first two calendar months of the HAP contract term*. For the penalties to take effect, all of the following circumstances must apply:

• Penalties imposed must be in accordance with generally accepted local rental market practices and law governing penalties for late payment of rent by a tenant;

- It must be the owner's normal business practice to charge such penalties for assisted and unassisted tenants; and
- The owner must also normally charge such penalties against the tenant for late payment of family rent to owner.

The PHA may add HAP contract provisions that define when the housing assistance payment by the PHA is deemed received by the owner. For example, receipt of payment may be defined as "upon mailing by the PHA" or "upon actual receipt by the owner". The PHA may only use administrative fee income or the administrative fee reserves for the program to pay a late payment penalty. The PHA may not use other program receipts for this purpose.

The PHA does not have to pay any late payment penalty if HUD determines that the late payment was due to factors beyond the PHA's control. Nor does the PHA have to pay a late payment penalty if the payment was intentionally delayed or denied due to an owner breach of the HAP contract.

### **Processing Housing Assistance Payments**

While most PHAs issue checks for housing assistance payments, some subcontract this function to another organization, such as a banking institution. While both approaches are acceptable, one may be more efficient or cost-effective, depending upon a PHA's individual circumstances and needs. When choosing or re-assessing an existing approach, consider the following:

- How many housing assistance payments do you process each month?
- How many staff members are dedicated to this task? What are their roles and responsibilities? What percentage of their time is dedicated to this task each month?
- How much does it cost you to process housing assistance payments each month?
- What services can an outside organization provide and at what cost?
- If this activity is to be outsourced, will the amount of monitoring required to assure that the process will be more or less cumbersome than the monitoring required when this activity is done in-house?

Checks may be processed using a manual or automated system. PHAs should also consider the use of electronic transfer. While automated systems are recommended for PHAs with large programs, a manual system may be adequate for a PHA with a small number of checks to process each month. PHAs should consider the cost of purchasing a computer, accounting software, training, ongoing technical assistance, and hardware and software maintenance as well as staff technical capabilities before switching from a manual to an automated system. One advantage of a manual system is that the time to process payment adjustments and issue checks outside of the regular payment cycle is often less than it is for automated systems.

The advantages of an automated system are:

- Disbursements are made more quickly;
- Staff time dedicated to HAP processing is reduced;
- Payment accuracy is improved;
- Duplicate payments may be avoided entirely or more easily detected; and
- Accounting reports can be more easily generated.

Whether automated or manual, PHAs should ensure that their HAP processing system is flexible enough to allow for the issuance of additional checks outside of the regular payment cycle to account for payment changes and adjustments that occur during the month. Any good HAP processing system takes into consideration and accounts for periodic changes in the amount of housing assistance or in the name of the payee as the result of:

- Changes to the TTP;
- Adjustments in the utility allowance;
- Adjustments to the contract rent;
- Families that move or are terminated from the program; and
- Changes in ownership of the unit occupied by the assisted family.

#### USEFUL MONITORING REPORTS RELATED TO HAP PROCESSING

- Payment history showing number and amount of housing assistance payments made monthly, quarterly, or annually.
- Payment history showing number and amount of adjustments made on behalf of each family and reason for each adjustment, with the ability to look at this data in aggregate on a monthly, quarterly, and annual basis.
- Leasing rates.
- Average HAP payment by bedroom size category for budgeting purposes.

When considering switching to an automated processing system, PHAs, particularly small ones, should explore a variety of options, such as using the computer resources of the local government, which often has automated systems already in place for distributing public assistance payments or government employee checks. These computer systems can often be adapted to meet HAP processing requirements. Another option is to enter into a cooperative

agreement with another PHA, or pool resources among local PHAs to purchase or operate an automated HAP processing system for multiple PHAs. If the PHA chooses to hire a contractor or make use of another government agency, that entity will be responsible for absorbing the costs of any late payment penalties.

Regardless of the processing approach chosen, the most important objectives of the PHA are to issue checks to owners *on time* and for the *correct amount*. Recruiting and retaining good owners in the housing choice voucher program is a necessary and challenging responsibility of the PHA. One way a PHA can meet this challenge is to commit to timely processing of housing assistance payments. One of the most common and valid complaints of owners is that they receive HAP checks late. Revamping a check processing system to ensure that owners are paid on time and accurately is a worthwhile investment; without owners, the program cannot meet its purpose of providing eligible low-income families with decent, safe, sanitary and affordable housing.

#### "FIRST PASS" INCENTIVE PROGRAM FOR OWNERS

In an effort to attract owners to the housing choice voucher program and improve service to owners, one PHA has implemented a program called "First Pass" to streamline its HAP processing so that owners receive their first HAP checks for units undergoing initial inspection at the time of HAP contract execution.

The PHA asks the owner to specify the date on which the unit will be ready for initial HQS inspection. If the unit is ready by the date specified, *and* the unit passes HQS, the PHA will manually issue the first HAP check and deliver it to the owner at the time of HAP contract execution. Normally, the data entry required to issue the HAP payment occurs after the PHA and owner execute the HAP contract, and the first HAP check is mailed with the next regularly scheduled automated check run. The check may not arrive in the owner's mail for 30-45 days after contract execution. The First Pass program eliminates this delay.

In addition to the regular monthly check run, it is common for PHAs, to have one additional check run each month. Generally the additional check run covers actions taken between the check cut-off date and the end of the month, while occasional manual checks are cut in special cases, such as to correct errors or omissions. It is important that the PHA closely monitors and controls all check processing.

The regular check run should always be the most comprehensive run. If a large or growing number of checks is being processed in the second check run, the PHA should carefully review its HAP processing policies and procedures to identify any deficiencies and shortcomings.

One common deficiency is that the PHA's cut-off date for processing housing assistance payments may be too early in the month. A cut-off date that is as close to the last day of the month as possible results in more checks processed in the regular check run and fewer payment adjustments. The goal is to process housing assistance payments efficiently and quickly.

A second common deficiency is that check-runs often require that the PHA's automated system shut down for a period of time, resulting in "down time" for front-line staff. Leasing staff, for example, may be unable to access information in the computer, update cases, or process paperwork. Depending upon the extent and impact of this down-time, one option is to consider running checks outside of regular business hours, such as early morning or late evening.

The cutting of occasional manual checks should also be limited and tightly monitored, as manual checks increase the risk of error, fraud, and abuse. In particular, the PHA with automated systems must ensure that the information used to issue a hand-written check is then entered into the automated system.

### 11.5 CONTENTS OF HAP CONTRACT

Form HUD-52641 is the HAP contract for the housing choice voucher program. HUD requires PHAs to use this form, and it cannot be modified. The HAP contract contains three parts:

- Part A, Contract Information;
- Part B, Body of Contract; and
- Part C, Tenancy Addendum.

In addition to regular housing choice voucher program tenancies, the HAP contract must also be used for the following "special housing types":

- Single room occupancy (SRO);
- Congregate housing;
- Group homes;
- Shared housing;
- Manufactured home rentals where the tenant is not the owner of the manufactured home and the space rent is included in the rent to owner; and
- Cooperative housing.

The HAP contract is *not* used for the following special housing types:

- Manufactured home space rental by a family that owns the manufactured home and leases only the space; and
- Section 8 homeownership program.

## **Part A: Contract Information**

To prepare the HAP contract, the PHA must fill in all of the contract information requested in Part A of the HAP contract. The HAP contract applies only to the household and contract unit

specified in Part A. Form HUD-52641 contains section by section instructions for completing Part A. Part A contains the following information:

- Name of tenant
- Address of contract unit
- Names of household members
- First date and last date of initial lease term
- Amount of initial monthly rent to owner
- Amount of initial housing assistance payment
- Identification of utilities and appliances to be supplied by owner and tenant
- Signatures of the PHA representative and owner

Although the HAP contract must be word for word in the form prescribed by HUD, PHAs have the discretion to add the following to Part A of the HAP contract:

- Language prohibiting the owner to collect a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants; and
- Language that defines when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or actual receipt by the owner).

### **Part B: Body of Contract**

Part B is the body of the HAP contract. It describes in detail program requirements affecting the owner and owner roles and responsibilities under the housing choice voucher program. Most of the requirements contained in Part B of the HAP contract are explained in this guidebook chapter. Requirements in Part B related to leasing, rent reasonableness, and HQS are discussed in detail in Voucher Guidebook Chapters 8, 9, and 10, respectively.

# PART B OF HAP CONTRACT: BODY OF CONTRACT OUTLINE OF CONTENTS

Purpose
Lease of Contract Unit
Maintenance, Utilities, and Other Services
Term of HAP Contract
Provision and Payment of Utilities and
Appliances
Rent to Owner: Reasonable Rent
PHA Payment to Owner
Owner Certification

Prohibition of Discrimination
Owner's Breach of HAP Contract
PHA and HUD Access to Premises and
Owner's Records
Exclusion of Third Party Rights
Conflict of Interest
Assignment of the HAP Contract
Written Notices
Entire Agreement: Interpretation

# Lease of Contract Unit

The HAP contract states the following: 1) the owner has leased the contract unit to a housing choice voucher program family; 2) the PHA has approved the lease; and 3) the lease includes

word-for-word all provisions of the tenancy addendum (Part C of the HAP contract). The HAP also states that it is the owner's responsibility to screen for family behavior or suitability for tenancy, and the PHA is not responsible for such screening. It also clarifies that the PHA is not liable or responsible to the owner or other persons for the family's behavior or conduct in tenancy. The HAP contract also contains the owner's certification that the lease: 1) contains all provisions of the tenancy addendum; 2) is in standard form; and 3) is consistent with state and local law.

Maintenance, Utilities, and Other Services

The owner must provide all housing services agreed to in the lease. The owner must maintain the unit and premises in accordance with HQS and supply all utilities needed to comply with HQS. If the owner fails to do this, the PHA may take action against the owner, including recovering overpayments, suspending housing assistance payments, abating or reducing housing assistance payments, and terminating housing assistance payments and the HAP contract. These actions can be taken only if the owner, and not the family, is responsible for the HQS breach. The PHA must not make any housing assistance payments to the owner if the unit is in violation of HQS, unless the owner corrects the deficiencies within the required timeframe and the PHA verifies that the corrections have been properly made. The PHA may inspect the unit and premises at any time the PHA determines necessary to ensure that the unit meets HQS. The PHA must notify the owner of any HQS deficiencies uncovered. (See Chapter 10.)

Provision and Payment for Utilities and Appliances

The lease and the HAP contract must specify what utilities and appliances are to be provided or paid by the owner or the tenant. The language contained in the lease and the HAP contract regarding payment for utilities and appliances must be consistent.

Rent to Owner: Reasonable Rent

During the HAP contract term, the rent to owner must never exceed the reasonable rent for the contract unit, as determined by the PHA. The PHA determines the reasonable rent in accordance with HUD requirements and may redetermine reasonable rent at any time. During the HAP contract term, the rent to owner may not exceed the rent charged by the owner for comparable unassisted units on the premises. The owner must give the PHA any reasonable rental information requested by the PHA. (See Chapter 9.)

Owner Certification

The HAP contract contains the owner's certification that during the term of the HAP contract:

- Owner maintains unit and premises in accordance with HQS;
- Unit is leased to the tenant:

- Lease includes the HUD tenancy addendum, is in accordance with the HAP contract and program requirements, and has been provided to the PHA;
- Rent to owner does not exceed rents charged by the owner for comparable unassisted units in the premises;
- Other than the rent to owner, the owner will not receive any payments for rental of the unit during the contract term from the family, PHA, or HUD;
- Family does not own or have any interest in the unit;
- To the owner's knowledge, the family resides in the contract unit, and the unit is its only residence;
- Owner is not a relative of any member of the family, except if approving the tenancy would provide reasonable accommodation for a family member with disabilities.

### Prohibition and Discrimination

The HAP contract specifies that the owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the HAP contract. In addition, the owner must cooperate with the PHA and HUD in conducting equal opportunity compliance reviews and complaint investigations in connection with the HAP contract.

### PHA and HUD Access to Premises and Owner Records

The owner agrees to provide the PHA and HUD with any pertinent information related to the HAP contract. The HAP contract states that the PHA, HUD and the Comptroller General of the United States have full and free access to the contract unit and the premises and to all accounts and other records of the owner that are relevant to the HAP contract. The owner must grant access to computerized or electronic records and to any computers, equipment or facilities containing such records. The owner must assist the PHA in obtaining records.

# Exclusion of Third Party Rights

The HAP contract states that the family is not a party to or third party beneficiary of Part B of the HAP contract. The family, therefore, cannot enforce any provision of Part B and cannot take action against the owner or the PHA under Part B. The family may enforce and take action against the owner, however, under Part C, Tenancy Addendum, of the HAP contract.

The PHA is not responsible for or liable to any person injured as a result of the owner's action or failure to act in connection with managing the unit or premises or implementing the HAP contract. The owner is not the agent of the PHA, and the HAP contract does not create or affect any relationship between the PHA and the lender to the owner or any suppliers, employees,

contractors or subcontractors used by the owner in connection with managing the unit or promises or implementing the HAP.

# Conflict of Interest

The HAP contract contains conflict of interest provisions that may prohibit some owners from participation in the program. The owner certifies and is responsible for assuring that there are no conflicts of interest related to the HAP contract or in any benefits or payments under the contract. (See Section 11.2, *Owner Approvals*, above.)

Written Notices

Any notice by the PHA or the owner in connection with the HAP contract must be in writing.

Entire Agreement: Interpretation

The HAP contract contains the entire agreement between the owner and the PHA. It must be interpreted and implemented in accordance with HUD requirements.

# Part C: Tenancy Addendum

PART C OF HAP CONTRACT: TENANCY ADDENDUM OUTLINE OF CONTENTS						
Voucher Program Lease Use of Contract Unit Rent to Owner Family Payment to Owner Other Fees and Charges Maintenance, Utilities, and Other Services Termination of Tenancy by Owner	Lease: Relation to HAP Contract PHA Termination of Assistance Family Move Out Security Deposit Prohibition of Discrimination Conflict with Other Provisions of Lease Notices Definitions					

The tenancy addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by the PHA. The owner must sign the HUD tenancy addendum with the prospective tenant, and the tenant has the right to enforce the tenancy addendum against the owner. The terms of the tenancy addendum prevail over any other provisions of the lease.

#### 11.6 HAP CONTRACT EXECUTION AND TIME LIMITS

Once the PHA determines that all applicable program requirements have been met, the PHA prepares the HAP contract for execution. When the process for requesting tenancy approval is completed, the PHA notifies the owner and the family of the approval or disapproval of the tenancy. If the tenancy is approved, the PHA prepares the HAP contract. To prepare the HAP contract, the PHA must compute the family rent to owner, utility reimbursement (if any), and the

housing assistance payment. The PHA also enters the amount of the security deposit collected by the owner. The family and owner execute the lease. The owner and the PHA execute the HAP contract. Generally at least two "originals" of the HAP contract are prepared with original signatures so that both the owner and the PHA have an original document in their possession.

The PHA and the owner must execute the HAP contract no later than 60 calendar days from the beginning of the lease term. The PHA must not make any housing assistance payments to the owner until the HAP contract has been executed. If the HAP contract is executed after the beginning of the lease term, the initial housing assistance payment would include the amount due to the owner for those days in which the unit was under lease and occupied but no HAP contract was signed, up to the maximum of 60 days. Any HAP contract executed after the 60-day period is void, and the PHA cannot make any housing assistance payments to the owner.

In cases where there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC, the PHA may still execute the HAP contract.

Prior to HAP contract execution, the PHA should carefully review Part A of the HAP contract to ensure that it is complete and accurate. The PHA should reconfirm the family's composition and information related to income and allowances. If significant changes have occurred, the PHA may decide to reverify and recalculate the family share. Reverification at this point is not required, and some PHAs may opt not to reverify in an effort to lease families as quickly as possible and/or to reduce staff workload. Depending on the PHA's interim reporting policy, changes could be captured at an interim or the annual reexamination.

It is important that both the family and the owner fully understand the requirements contained in the HAP contract and tenancy addendum, particularly those requirements related to their rights and responsibilities under the housing choice voucher program. Some PHAs choose to meet with the owner and family together to review the HAP contract, tenancy addendum, and owner and family obligations under the program. Other PHAs use the family briefing to explain these requirements to the family and invite new owners to an orientation to discuss their roles and responsibilities. Family obligations are fully described in Chapter 8.

It is equally important that PHA staff fully understands the provisions of the HAP contract, since the HAP contract is the binding agreement that governs the relationship between the PHA and the owner. It is also good customer service for staff to be able to explain clearly and consistently HAP contract provisions to its owners, families, and community groups.

PHAs should make a concerted effort to execute the HAP contract prior to or as close to the beginning of the lease term as possible. In order to ensure that the PHA executes HAP contracts in a timely fashion and to monitor compliance with the 60-day execution deadline, PHAs should assign responsibility to a particular staff person to monitor HAP contract execution. Exhibit 11-1, HAP Contract Execution Log, contains a sample log to monitor HAP contract execution.

# EXHIBIT 11-1 HAP CONTRACT EXECUTION LOG

		No. Days between	Date HAP	Date	Date Contract	Date	Date	
ite Data Entry		HAP & Lease Dates	Execution by PHA	Lease Effective	Signed O/A	Contract Mailed	Tenancy Approved	Family Name
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# Notes:

- Depending upon the PHA's procedures the "Date Tenancy Approved" could be either the date the unit passes inspection or the date the rent is determined reasonable.
- "Date Contract Mailed" would only be needed if the owner does not sign the HAP contract in person. In this case, some PHAs require that the owner return the HAP contract within a certain deadline. Recording this date enables the PHA to monitor this potential delay in the leasing process.
- "Date Contract Signed O/A" is the date the Owner/Agent signs the HAP.
- "No Days Between HAP and Lease Dates" monitors whether or not the PHA is in danger of not meeting the requirement that the HAP be executed within 60 days of the beginning of the lease.
- "Date of Data Entry" is the date HAP information is recorded (either manually or electronically) in the HAP register. This date is important because it can help the PHA ensure that payments are processed in a timely manner.

# 11.7 CHANGES REQUIRING NEW HAP CONTRACT

The PHA must approve a new tenancy and execute a new HAP contract in the following cases:

- If the owner or family request a new lease;
- If there are any changes in the lease requirements governing tenant or owner responsibilities for utilities or appliances;
- If there are changes in lease provisions governing the term of lease; and

If the family moves to a new unit, even if the new unit is in the same building or complex. Changes in the lease, other than those identified above, do not necessitate the execution of a new HAP contract. The owner must notify the PHA, however, of any changes in the amount of rent to owner at least 60 days before the changes go into effect. Any such changes would be subject to rent reasonableness requirements. (See Chapter 9.)

### 11.8 OWNER RESPONSIBILITIES

Owner responsibilities are defined in the HAP contract, lease, and HUD regulations. The owner is responsible for the following:

- Performing all management and rental functions for the assisted unit, including selecting a voucher holder to lease the unit and deciding if the family is suitable for tenancy;
- Maintaining the unit in accordance with HQS, including performing ordinary and extraordinary maintenance;
- Complying with equal opportunity requirements;
- Preparing and furnishing to the PHA information required under the HAP;
- Collecting from the family any security deposit, the family rent to owner, and any charges for unit damage by the family;
- Enforcing tenant obligations under the lease; and
- Paying for utilities and services, unless paid for by the family under the lease.

### 11.9 OWNER BREACH OF HAP CONTRACT

Any of the following actions by the owner, principal, or other interested party is a breach of the HAP contract:

• Violation of any obligation under the HAP contract, including the requirement to maintain unit according to HQS;

- Violation of any obligation under any other housing choice voucher program or Section 8 project-based HAP contract;
- Fraud, bribery, false statements, or any other corrupt or criminal act in connection with the HAP contract or any federal housing program;
- For projects with HUD-insured mortgages or HUD loans, failure to comply with the applicable program regulations, the mortgage or mortgage note, or the regulatory agreement or fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan.

If the PHA determines that a breach or noncompliance of the contract has occurred, it may exercise any of its rights and remedies under the HAP contract. The PHA must notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take correction action by an established deadline. The PHA may recover any overpayment, suspend housing assistance payments, abate or reduce the housing assistance payment, terminate the payment or terminate the HAP contract. The PHA may also obtain additional relief by judicial order or action, including specific performance, other injunctive relief, or order for damages.

If a PHA determines that an owner is not entitled to the housing assistance payment or any part of it, the PHA may deduct the amount of the overpayment from any amounts due the owner, including amounts due under any other housing choice voucher program HAP contract.

The PHA must provide the owner with written notice of any termination or reduction in housing assistance payments or the termination of the HAP contract.

#### 11.10 CHANGE IN OWNERSHIP

Owners wishing to change ownership must supply all information as requested by the PHA, and the owner must receive written consent of the PHA prior to assigning a HAP contract to a new owner. The requirements related to owner approvals also apply to changes in ownership. See Section 11.2, Owner Approvals, above.

The new owner must agree to be bound by and comply with the HAP contract. In addition, the agreement between the new owner and the former owner must be in a form the PHA accepts. The new owner must give the PHA a copy of the executed agreement.

The PHA should require that the agreement between the new owner and former owner be in writing. Oftentimes the actual sales contract will specify whether or not the assisted tenancy is to be dissolved upon change of ownership. If the assisted tenancy continues, the PHA should require that the new owner submit to the PHA a copy of its W-9 Form for tax purposes.

# 11.11 RECORD-KEEPING REQUIREMENTS

PHAs must maintain a manual or automated HAP register to record data necessary for making and tracking housing assistance payments made to owners each month, including any payment adjustments. Whether manual or automated, the HAP register must include:

- Name and address of family;
- Name and address of owner;
- Unit size:
- Beginning date of lease term;
- Monthly contract rent to owner;
- Monthly tenant rent;
- Monthly housing assistance payment to owner; and
- Date family vacated, and number of days unit is vacant, if any.

The PHA must keep all related bank or payment records for review by HUD staff or independent public accountants.

During the term of the assisted tenancy and for at least three years thereafter, the PHA must keep on file a copy of the HAP contract, including the tenancy addendum, and the lease. The family receives an original of the lease and copy of the tenancy addendum. The owner receives an original of the lease and HAP contract, including the tenancy addendum.

## 11.12 INTERNAL REVENUE SERVICE (IRS) REPORTING REQUIREMENTS

The PHA must request from the owner a copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, for IRS reporting purposes. This request usually occurs at the time of execution of the HAP contract, although some PHAs request that the owner submit this form with the request for tenancy approval. IRS Form W-9 asks for the owner's name, the business name and address, and the taxpayer identification number. The PHA uses the information obtained from the Form W-9 to report to the IRS the amount of income it has paid to owners (in the form of housing assistance payments). The PHA uses the IRS Form 1099 for this purpose.

# 11.13 SEMAP INDICATOR 11, PRE-CONTRACT HQS INSPECTIONS

SEMAP Indicator 11, Pre-Contract HQS Inspections, measures whether newly-leased units pass HQS inspection on or before the beginning date of the assisted lease and HAP contract. (See Chapter 10.)